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PERSONNEL PRACTICES

Details of Schedule C Employees to the White House

Statement of Bernard L. Ungar, Director, Federal Human
Resource Management Issues, General Government Division



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Details of Schedule C Employees to the White House

Summary Statement by
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GAO issued three reports from 1987 to 1990 on agencies' use of Schedule C appointment authority. The major thrust of the reports was that agencies were using the authority to hire some employees exclusively for details to the White House.

In many instances, Schedule C employee appointment dates were the same, or shortly before, the dates the employees were detailed to the White House. In some cases, the detailees were already at the White House when the Schedule C appointments were made.

GAO's position has been and continues to be that this practice is an inappropriate use of Schedule C appointment authority. The purpose of this authority is specifically to facilitate the employment of policymakers and confidential assistants within the agency for which the positions are established. This purpose is frustrated when positions are created for some other use.

GAO recommended in 1988 that OPM issue regulations prohibiting the detailing of Schedule C appointees within 90 days of their appointment. OPM regulations generally prohibit the intra-agency detailing of certain employees within 3 months of a competitive appointment, but do not apply to Schedule C appointees. OPM disagreed with this recommendation stating that if there was a legitimate need for an immediate detail of a Schedule C appointee to the White House, such a regulation would only serve as an obstacle to delay the accomplishment of an Administration task.

GAO recommended in 1990 that OPM require agencies to certify in their applications that Schedule C positions are not being established solely or primarily for details. GAO also recommended that OPM disapprove applications that do not contain this certification. OPM also disagreed with this recommendation because it would place OPM in the position of second guessing the judgement and legitimate needs of the agency and the White House on the validity of a subsequent detail of the Schedule C incumbent.

Given OPM's reluctance to deal with the issue, GAO suggested that legislation would be needed. Legislation was enacted requiring agencies to certify that Schedule C positions are not being created solely or primarily to detail the employee to the White House. Without this certification, agencies are prohibited from obligating or spending funds to pay salaries and expenses of Schedule C employees. GAO reviewed a sample of 13 agencies' requests to OPM to approve Schedule C positions and found compliance with the certification requirement.

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to take part in the Subcommittee's hearing on agencies' use of Schedule C appointment authority to hire employees and detail them to the White House. As of February 29, 1992, the Office of Personnel Management (OPM) had approved 1,713 Schedule C positions which were occupied by agency appointees.

REGULATIONS GOVERNING USE
OF SCHEDULE C POSITIONS

Schedule C positions are excepted from the competitive service because they are to be either policy-determining or involve a close and confidential working relationship with a key official. The key official can be a presidential appointee, another Schedule C appointee, or an SES appointee occupying either a noncareer or a general position. Schedule C appointees may not report to or through officials in the competitive service or in career-reserved positions in the SES and a close and confidential relationship does not exist unless the appointees are subject to the immediate supervision of the key official.

Generally, details of Schedule C employees are not different from details of other federal employees. A detail is the temporary assignment of an employee to a different position in the same or another agency for a specified period, with the employee returning to his or her regular duties at the end of the detail. Under principles of appropriations law, when federal employees are detailed to other agencies, the lending agencies must be reimbursed for the costs of the employees unless the details will aid the lending agencies in accomplishing a purpose for which they received appropriations.

There is, however, a statutory exception to the reimbursement requirements for employee details to the White House. Under this exception, which was provided by Public Law 95-570, dated November 2, 1978, employees can be detailed to five specified offices of the White House on a nonreimbursable basis for up to 180 calendar days in a fiscal year. Those offices are the White House Office, the Executive Residence at the White House, the Office of the Vice President, the Office of Policy Development, and the Office of Administration.

The law requires the White House to reimburse the lending agencies for such details extending beyond 180 calendar days during the fiscal year when the detailees are performing services which have been or would have been otherwise performed by a White House employee. Therefore, reimbursement must be made for detailees who are primarily performing White House functions and not primarily performing functions furthering the mission of the detailing agency.

In addition, the law requires the President to report annually to Congress on (1) the number of employees detailed over 30 days in a fiscal year to the five specified offices in the White House regardless of duties performed and (2) the reimbursements made to agencies for employees detailed more than 180 days in each fiscal year.

Agencies also are required to report annually to Congress. On December 21, 1987, Congress passed Public Law 100-202 which requires that executive branch agencies submit annual reports to the Senate and House Committees on Appropriations on employees they detail to other agencies, including the White House. These reports are to include, without regard to the length of the detail, military and civilian personnel. However, this requirement does not apply to military and civilian personnel detailed to or from certain specified agencies having missions which include intelligence functions.

OPM RESPONSIBILITIES

OPM must approve the establishment of each permanent Schedule C position and any subsequent position changes, such as in title, grade, immediate supervisor, and organizational location. OPM's approval of a Schedule C position is to be revoked immediately when the position is vacated. Since fiscal year 1991, in requesting approval for a Schedule C position, heads of agencies have been required to certify to OPM that the position is not being created solely or primarily in order to detail the employee to the White House. This requirement does not apply to agencies performing intelligence functions.

GAO WORK ON SCHEDULE C DETAILS TO THE WHITE HOUSE

From 1987 to 1990, we issued three reports which criticized agencies for hiring employees for Schedule C positions and detailing them directly to the White House. We said this practice was an inappropriate use of Schedule C appointment authority. We indicated that the purpose of this authority was specifically to facilitate the employment of policymakers and confidential assistants within the agency for which the positions were established. We said that this purpose was frustrated when positions were created for some other use.

In July 1987 we reported on the extent and manner in which Schedule C and other employees of 12 departments were detailed to the White House during fiscal years 1980 to 1985.¹ We found that 11 departments had used the Schedule C appointment authority

¹Personnel Practices: Detailing of Federal Employees to the White House (GAO/GGD-87-102BR, July 22, 1987).

to hire individuals exclusively for details to the White House and that none were billing the White House for employees detailed over 180 days. We also found that the President's annual reports to Congress underreported the number of detailees each fiscal year and were misleading because they included as reimbursements funds obligated but not expended.

In March 1988 we reported on the extent and manner in which Schedule C and other employees from the Department of Defense (DOD) were detailed to the White House during fiscal years 1980 through 1985.² We found the same problems for employees detailed from DOD to the White House as we did with employees from the cabinet-level departments. While we recognized that the White House and DOD had developed new procedures to ensure proper reporting and reimbursement for employee details, we said they had not developed procedures to prevent the use of the Schedule C appointment authority to hire individuals for details to the White House.

We pointed out that OPM regulations generally prohibit the intra-agency detailing of certain employees within 3 months of a competitive appointment. However, we said there were no similar regulations pertaining to Schedule C employees. Therefore, we recommended that OPM issue regulations prohibiting the detailing of Schedule C appointees within 90 days of appointment to preclude inappropriate use of Schedule C authority. OPM subsequently decided that, in keeping with its overall goal of giving agencies the necessary flexibility to manage effectively, it would not be appropriate to regulate this practice.

In March 1990 we reported on Schedule C employees at the Department of Energy (DOE).³ We found that most of the problems that we identified in the earlier reports also existed at DOE. In addition, we identified a new problem. It involved DOE not reporting to OPM, as required, changes to Schedule C positions such as the organizational location of the incumbent or when the incumbent vacated the position.

We recommended that the Secretary of Energy (1) discontinue the practice of hiring Schedule C appointees and assigning them directly to the White House, (2) report the details to OPM and not renew them at their conclusion, (3) prepare the reports on details for fiscal year 1989 and implement procedures to assure that they continue to be prepared in the future, and (4) implement the new procedures to assure that agencies are promptly

²Personnel Practices: Federal Employees Detailed From DOD to the White House (GAO/GGD-88-33, Mar. 14, 1988).

³Personnel Practices: The Department of Energy's Use of Schedule C Appointment Authority (GAO/GGD-90-61, Mar. 8, 1990).

billed for details. DOE said it would improve its reporting and billing procedures. However, it did not believe that it was doing anything wrong in detailing employees to the White House and did not believe it was required to report the details to OPM.

We also recommended that the Director of OPM (1) require agencies to certify that Schedule C positions were not being established solely or primarily for details, (2) disapprove applications that do not contain this certification, (3) periodically monitor agencies' use of Schedule C employees for compliance with its regulations and guidelines, and (4) reemphasize to agencies that Schedule C employees can only occupy positions in the agency that OPM approves, that any changes to these assignments must be approved by OPM, and that they should submit annual reports as required by Public Law 100-202. OPM did not agree with the recommendations regarding certification, saying that it would place OPM in the position of second guessing the judgement and legitimate needs of the agency and the White House. OPM agreed to include agency use of Schedule C authority in its routine examinations of agency personnel systems and to reemphasize Schedule C requirements to agency personnel directors.

Given OPM's and DOE's refusal to discontinue or preclude the practice of hiring Schedule C employees for immediate detail to the White House, we suggested that specific legislation would be needed to correct this problem. Such legislation was included in the fiscal years 1991 and 1992 Treasury, Postal Service and General Government Appropriations Acts. These laws require agency heads, with the exception of specified intelligence agencies, to certify to OPM that Schedule C positions were not created solely or primarily to detail employees to the White House.

AGENCY COMPLIANCE WITH THE LEGISLATION

We discussed the agency certification requirement with OPM officials who told us that they were requiring agencies to submit the certification with their requests to establish or reestablish each Schedule C position. They said that the requirement was implemented effective November 6, 1990, in a memorandum to White House liaisons. We spot checked the 13 agencies that we reviewed in our earlier reports to determine if the agencies had submitted the required certifications. As of February 29, 1992, those 13 agencies had filled 1,199 Schedule C positions which OPM had approved. Of the 1,199 positions, 492 had been approved during the time period that the certification requirement was in effect.

From an OPM listing of Schedule C positions by agency and in Job Number sequence, we selected every tenth position until we had selected 10 percent of the positions in each of the 13 agencies. This resulted in selecting 50 of 492 positions to review. We

found that certifications were required for 45 of the Schedule C positions because the position was being established for the first time or was being reestablished. For all 45 positions, agencies submitted the required certifications. Certifications were not required for the remaining five positions because they were being upgraded as opposed to being established. We did not determine whether the 13 agencies were detailing the Schedule C employees to the White House.

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That concludes my prepared statement. We will be happy to answer any questions.

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